



Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909

February 22, 2008

TO: Michigan Court Forms Committee (Circuit and District representatives only)

FROM: Amy L. Byrd, Forms and Records Manager
Traci Gentilozzi, Forms and Manuals Analyst

RE: Agenda and Materials for **March 6, 2008 Meeting**

PLACE: **Michigan Hall of Justice**, 925 West Ottawa, downtown Lansing (map enclosed)

Below is the agenda for the March 6 meeting for the Circuit and District Section of the Michigan Court Forms Committee. The meeting starts at 9:30 a.m. and ends at 3:30 p.m. **Luncheon reservations have been made for you; if you cannot attend, please contact us at least two days before the meeting.** Please note that we are located at 925 W. Ottawa. A map has been provided. Although documentation is provided with the agenda, it would be helpful to bring a copy of the Michigan Court Rules and any other resources you believe are necessary.

Notice of Minor Revisions

Forms requiring minor changes, such as spelling, citations, grammar, punctuation, etc., will be corrected by the State Court Administrative Office and provided with the agenda materials, but do not require discussion or approval by the committee. Any of these forms will be discussed if members raise substantive issues or if also included in the agenda for other purposes. These forms will be corrected and distributed in June 2008: MC 02, MC 07a, MC 25, MC 26, MC 28, MC 34, MC 38, MC 39, MC 49, MC 51, MC 56, MC 57, MC 59, MC 60, MC 61, MC 62, MC 63, MC 65, MC 66, MC 67, MC 68, MC 69, MC 74, MC 81, MC 82, MC 83, MC 208, MC 211, MC 219, MC 224, MC 231, MC 254, MC 260, MC 270, MC 271, MC 274, MC 276, MC 277, MC 278, MC 281a, MC 281b, MC 282, MC 284, MC 285, MC 286, MC 287, MC 288, MC 290, MC 292, MC 301, MC 304, MC 307, MC 416, MC 501, MC 502, MC 503, CIA 01, CIA 02, CIA 03, CIA 05, CIA 06, DC 03, DC 44, DC 85, DC 86, DC 90, DC 91, DC 99, DC 99a, DC 100a, DC 100b, DC 100d, DC 101, DC 102a, DC 102b, DC 102d, DC 103, DC 104, DC 105, DC 105A, DC 106, DC 107, DC 118, DC 119, CC 08, CC 08a, CC 20a, CC 58, CC 71, CC 78, CC 79, CC 80, CC 88, CC 89, CC 116, CC 117, CC 219b, CC 236, CC 257, CC 261, CC 268, CC 269, CC 375M, CC 378, CC 379, CC 380, CC 381, CC 383, CC 385, CC 403, and CC 404.

Circuit Session - 9:30 a.m. - 11:30 a.m.

1. Declaration Language from MCR 2.114, Proof of Service

MC 2.107(D) says that proof of service may be by “a statement regarding the service verified under MCR 2.114(B) . . .” This is interpreted to mean the certificate made by the officer should have the declaration, “I declare that the statements above are true to the best of my information, knowledge, and belief.” The following forms, that were reviewed for minor errors, were found to contain a proof of service that should contain this language if the Committee agrees with the above interpretation: CC 375, CC 375M, CC 376, CC 376M, CC 377, CC 377M, CC 380, CC 380M, CC 381, and CC 382. There may be other circuit court forms that contain a proof of service that are not listed. Also, it was previously agreed that a line for the printed name of the process server should be added to the proof.

2. Standard Language for Certificate of Mailing/Service

In reviewing the forms for minor errors, it was noted that several different standards have been applied to the Certificate of Mailing/Service. The Committee is asked to determine whether one standard should be applied for the certificate of mailing and another standard for the certificate of service. The following forms contain a certificate of mailing: CC 08, CC 08a, CC 58, CC 80, CC 88, CC 89, CC 257, CC 257a, CC 268, CC 269, CC 378, CC 385, and CC 403. The following forms contain a nonstandard certificate of proof of service instead: CC 79, CC 383, and CC 404. Proposed language for the certificate of mailing is “I certify that on this date I served a copy of this [name of document] on the parties or their attorneys by first-class mail addressed to their last-known addresses.” This language would change depending on who is being served (single party versus multiple parties, etc.).

3. CC 219b, Judgment of Sentence, Commitment to Department of Corrections

A request has been made by the Department of Corrections to add a check box option for indicating when a conviction requires lifetime electronic monitoring pursuant to MCL 750.520n and MCL 791.285. Proposed language is __ 11. Defendant is subject to lifetime monitoring pursuant to MCL 780.520n and MCL 791.285.

Also, a request has been made to add a parenthetical statement to item 3 to remind the judge to order sex offender registration if the defendant has not yet completed the registration and it was not previously ordered.

4. CC 257 and CC 257a, Motion for Relief from Judgment

A request has been made to add a signature line at the end of the motion for the defendant to sign as required by MCR 2.114(C). Also, a decision should be made as to which form to retain. Currently, there is a two-page form and a four-page form. It has been

suggested that the four-page form is the most useful.

5. CC 268, Order Regarding Driver's License Restoration
CC 269, Order Regarding Driver's License Restoration After Review of the Record

A request has been made to clarify that the note on the back of these forms does not apply to arrests after 10/1/99. Also, it should be made clear when specific cites referenced in the note were in effect since many of them are no longer in effect. This could be done by including the year and public act number so that the previous statutory language can be reviewed. Finally, references to MCL 257.323(6) in items 3a and 4 of CC 269 should be changed to MCL 257.323(4). Drafts are provided.

6. CC 382, Motion and Order to Show Cause for Violating Valid Personal/Foreign Protection Order

A request has been made to add a field for the respondent's date of birth, if known. This information is relevant to LEIN entry and will be placed on either CC 382a or CC 384. When the respondent is not arrested for violating an order, this motion is filed and the court will rely on the petitioner to provide the date of birth if known.

7. CC 382a, Order After Hearing on Show Cause for Violating Valid Personal/Foreign Protection Order
CC 384, Order After Hearing on Violation of Valid Personal/Foreign Protection Order

The instruction to the clerk of the court at the foot of the form has been revised to assist in reporting procedures to the Michigan State Police. Drafts are provided. The changes are made in conjunction with a September 27, 2007 memo to the courts from the SCAO, a copy of which is provided.

8. New Forms for Pro Se Litigants to Obtain Restoration of License

In 2007 the Committee developed and approved petitions and instructions to assist pro se litigants to obtain driver's license restoration. The instructions were not approved by the SCAO because neither statute nor court rule requires the development of pro se packets for this purpose. However, because the forms may be helpful to the legal community, they were published for comment in 2008 to determine interest in approving them for statewide use. The forms, as approved last year, are provided.

9. CC 23, Order of Removal to District Court

It is recommended this form be deleted because MCR 4.003 was repealed in 1997. Although circuit courts may continue to remove cases to district courts pursuant to local administrative order, this form has no statewide use at this point. Courts who continue the practice through local administrative order can create local orders instead.

Joint Session - Circuit and District - 11:30 a.m. – 12:00 noon

1. Declaration Language from MCR 2.114, Proof of Service and Verified Pleadings

MC 2.107(D) says that proof of service may be by “a statement regarding the service verified under MCR 2.114(B) . . .” This is interpreted to mean the certificate made by the officer should have the declaration, “I declare that the statements above are true to the best of my information, knowledge, and belief.” The following forms, that were reviewed for minor errors, were found to contain a proof of service that should contain this language if the Committee agrees with the above interpretation: MC 35, MC 36, MC 37, MC 72, MC 203, MC 302, MC 304, MC 321a, MC 503, and MC 504. There may be other Michigan court forms that contain a proof of service that are not listed. Also, it was previously agreed that a line for the printed name of the process server should be added to the proof.

Also, MCR 2.114(B)(2) states that “If a document is required or permitted to be verified, it may be verified by . . . including the following signed and dated declaration . . .” There are a number of forms that do not need to be verified, but they contain the declaration. Should the declaration be removed from these forms, especially since verification means personal knowledge of the facts, which an attorney almost always will not have? A plan for handling this may be to determine which pleadings must be verified and remove the declaration from all other forms. A list of the affected forms can be prepared for publication in 2009 and the changes made at that time. Is this an acceptable approach?

2. Standard Language for Certificate of Mailing/Service

In reviewing the forms for minor errors, it was noted that several different standards have been applied to the Certificate of Mailing/Service. The Committee is asked to determine whether one standard should be applied for the certificate of mailing and another standard for the certificate of service. The following forms contain a certificate of mailing: MC 07a, MC 25, MC 39, MC 49, MC 51, MC 57, MC 60, MC 61, MC 62, MC 81, MC 274, MC 276, MC 277, MC 278, MC 284, MC 285, MC 286, MC 288, MC 290, MC 301, MC 502, and MC 503. Proposed language for the certificate of mailing is “I certify that on this date I served a copy of this [name of document] on the parties or their attorneys by first-class mail addressed to their last-known addresses.” This language would change depending on who is being served (single party versus multiple parties, etc.).

Lunch - 12:00 noon - 12:30 p.m.

Joint Session continued – 12:30 p.m. - 2:30 p.m.

3. Space on Forms for File/Date Stamp

A request has been made to consider allocating space on all forms used in circuit court

(CC and MC) for stamping the file date and time.

4. Clerk of the Court, Deputy Clerk of the Court, and Court Clerk

There have been questions about the inconsistent use of the designations “clerk of the court,” “deputy clerk of the court,” “deputy clerk,” and “court clerk” beneath the signature lines on some of the forms. There has been a request that a consistent standard be applied. It is recommended that caution be used in this area and that the Committee carefully consider the use of the terms when each form is revised.

The Committee made conscious decisions in the past as to when it was appropriate or useful to place one of these captions beneath a signature line. These designations were intended to make it clear whether a clerk other than the clerk of the court may sign a document. The use of the term “deputy clerk” and “deputy clerk of the court” signifies that a clerk has been deputized by the clerk of the court and that the deputy clerk may sign a document on behalf of the clerk of the court. The term “court clerk,” however, signifies that this clerk is not deputized and is not the clerk of the court, and therefore, may only sign certain documents, such as a certificate of mailing.

The Committee is asked to discuss this issue and to determine the best method for reviewing all of the forms and specifically determining, for the record, the appropriate caption for each form that contains a signature line for a clerk.

5. MC 01, Summons and Complaint

Several attorneys have requested that this form be renamed “Summons” because the form does not contain any complaint information and it causes confusion for pro se litigants. This same request has been made at other times for similar reasons. The response from our office and the Committee has been that this form contains general information that is required to be in every civil complaint pursuant to MCR 2.113(C). In 1998, a bold statement was added to the form directly after the Summons and in the header of the Complaint. This statement was intended to make clear the additional complaint was still necessary. The statement says: “Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.” The Committee is asked to consider whether the current title has created a significant problem and if so, whether to rename the form or otherwise redesign the form for clarity.

6. MC 10, Judgment

A request has been made to allocate more space for specifying payment arrangements under “Other conditions.” In the last revision, this space was removed in order to accommodate the details for judgment interest. A draft is provided.

7. MC 13, Request and Writ for Garnishment (Nonperiodic)
MC 14, Garnishee Disclosure and P-01, Guide to Garnishment of Periodic Payments

A proposal has been received by the Representative Assembly of the Michigan State Bar to include a provision in these forms that expressly directs a bank or a financial institution to protect exempted income from garnishment when that income has been direct-deposited into the bank account from a source that is exempt under federal law. Drafts are provided.

The calculation sheet for MC 14 and the related Guide to Garnishment of Periodic Payments (P-01) needs to be amended to comply with the increase in federal minimum wage to \$6.55, effective July 24, 2008. A draft of the Test II chart is provided.

8. MC 15, Motion for Installment Payments

A request has been made to include a copy for the judge in the distribution pursuant to MCR 2.119(A)(2). Apparently, there have been instances where a judge was not provided with a copy even though MCR 3.104(B) requires the clerk of the court to promptly present the motion to the court (judge) after the 14-day period following the service date of the defendant's motion. Would this request resolve the problem, or should instructions to the clerk about the requirement of MCR 3.104(B) be added to the form? Or should this be handled as a training issue by the court where this is a problem?

9. MC 39, Judgment, Claim and Delivery

Should this form be amended to comply with the changes made to MC 10 in 2007 with regard to judgment interest?

10. MC 96, Judgment of Contempt

It is suggested that a proof of service be created for this form. Is a statement necessary regarding service pursuant to MCR 2.107(B)(1)(b), or is this only for the order to show cause? See MC 230, Motion and Order to Show Cause, for an example.

11. MC 216, 14-Day Notice, Traffic
MC 216a, Notice of Noncompliance, Drinking/Driving Offense

A request has been made to add the following language in item 3 of both forms: "and the cost to compel appearance may be added to the amount of your judgment." See drafts.

12. MC 218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment

A request has been made to increase space for indicating both the date and time of the show cause hearing. A draft is provided.

13. MC 219, Judgment of Sentence, Commitment to Jail

A request has been made to add a parenthetical statement to item 5 to remind the judge to order sex offender registration if the defendant has not yet completed the registration and it was not previously ordered.

14. MC 227, Application to Set Aside Conviction
MC 228, Order Regarding Application to Set Aside Conviction

The Michigan State Police request that both forms include advice to the defendant that an order setting aside a conviction does not relieve the defendant from his or her obligations under the Sex Offender Registration Act. If the person was required to register for a given conviction, that requirement remains after the conviction is set aside and, if the person registered as required before an order setting aside the conviction is entered, that person's registration will continue to appear on the public registry. Drafts are provided.

Also, a request has been made to change item 6 to allow for a finding that the court determines that the circumstances and behavior of the applicant from the date of the applicant's conviction to the filing of the application warrant setting aside the conviction, but that setting aside the conviction is not consistent with the public welfare. MCL 780.621(9) indicates that both conditions must be found for the court to set aside a conviction. Because of that, is it necessary to make findings in the negative? It is suggested that the court only need find in the affirmative that both conditions are true. Therefore, it is suggested that item 6 be changed to an option and the following language used in place of the current language: “___ 6. The circumstances and behavior of the applicant from the date of the applicant's conviction to the filing of the application warrant setting aside the conviction **and** setting aside the conviction is consistent with the public welfare.” Then in the order portion of the form, where it states that the application is denied a parenthetical would be added stating: “(If item 6 is not checked, the application must be denied.)

15. MC 234, Order for Counseling and Testing for Disease/Infection

A request has been made to remove the asterisks from the references to MCL 750.448 and MCL 750.449 on the reverse side of the form pursuant to MCL 333.5129(1). Although the court is not required to order testing on these two offenses until convicted, the court may order it earlier pursuant to MCL 333.5129(1). A draft is provided.

16. MC 235, Motion and Order for Destruction of Fingerprints and Arrest Card

The Committee considered the impact of *McElroy v Michigan State Police* upon this form last year and concluded the form was unaffected by the opinion. However, the Committee is asked to reconsider this decision because an attorney believes the opinion clearly denotes use of this form is inappropriate for any dismissal of any nature. This is based on a view that the court must make a finding of not guilty in order for fingerprints

to be destroyed. Therefore, because dismissals are not necessarily the result of a finding of not guilty, the second option in item 1 should be stricken from the form.

It is suggested this is not the only interpretation to consider. MCL 28.243(12)(h) could allow for dismissal of a case because a person should not have been charged in the first place and there is no basis for the case. In this instance, if MSP has not already destroyed the fingerprints, the court could order them destroyed by using MC 235.

The Committee is asked to review *McElroy*, the statute, and the form, to make an appropriate determination about proper use of MC 235, and to revise the form as necessary to further clarify its proper use.

17. MC 238, Judgment After Bond Forfeiture

A request has been made to consider expanding the use of this form to cover situations where the forfeiture is set aside and to accommodate multiple depositors of 10% bonds. Is there value in this from a statewide perspective? If so, should this form be modified or a separate form created for setting aside forfeiture?

18. MC 242, Assignment to Youthful Trainee Status

A request has been made to add a parenthetical statement to item 4 to remind the judge to order sex offender registration if the defendant has not yet completed the registration and it was not previously ordered.

19. MC 294, Order Delaying Sentence

A request has been made to reword item 7 to “Defendant shall be supervised by _____.” Also, a request has been made to add a parenthetical statement to item 4 to remind the judge to order sex offender registration if the defendant has not yet completed the registration and it was not previously ordered.

20. MC 304, Order for Alternate Service

A request has been made to include an option for denying a motion for alternate service.

21. MC 321a, Juror Qualification Questionnaire

It has been suggested that item 12 should say “Are you physically and mentally able to carry out the functions of a juror?” See MCL 600.1307a.

22. MC 321b, Juror Personal History Questionnaire

A request has been made to add two new questions: “Are you a U.S. citizen?” and “Have you ever been convicted of a felony?” These questions are on the Juror Qualification

Questionnaire, but the jury coordinator requesting this revision believes these questions should be asked again because of the increased number of illegal aliens and felons.

23. CC 298, Application for Leave to Appeal and Affidavit Explaining Delay
CC 299, Order Following Hearing on Application for Leave to Appeal

The Committee approved development of these forms in 2007 and recommended that drafts be typeset for review at the joint session in 2008. Drafts are provided.

24. New Form, Civil Summons Third Party

A request has been made to create a civil summons third party form.

25. New Form, Discharge of Judgment Lien

A request has been made to create a discharge of judgment lien. A draft is provided.

District Session – 2:30 p.m. – 3:30 p.m.

1. Declaration Language from MCR 2.114, Proof of Service

MC 2.107(D) says that proof of service may be by “a statement regarding the service verified under MCR 2.114(B) . . .” This is interpreted to mean the certificate made by the officer should have the declaration, “I declare that the statements above are true to the best of my information, knowledge, and belief.” The following forms, that were reviewed for minor errors, were found to contain a proof of service that should contain this language if the Committee agrees with the above interpretation: DC 102a, DC 102b, DC 102c, DC 102d, DC 103, and DC 107. There may be other district court forms that contain a proof of service that are not listed. Also, it was previously agreed that a line for the printed name of the process server should be added to the proof.

2. Standard Language for Certificate of Mailing/Service

In reviewing the forms for minor errors, it was noted that several different standards have been applied to the Certificate of Mailing/Service. The Committee is asked to determine whether one standard should be applied for the certificate of mailing and another standard for the certificate of service. The following forms contain a certificate of mailing: CIA 01, CIA 03, CIA 06, DC 44, DC 85, DC 87, DC 90, DC 91, DC 99, DC 99a, DC 104, DC 105, DC 105a, DC 106, and DC 119. The following forms contain a certificate of service: CIA 02, DC 03, and DC 248. Proposed language for the certificate of mailing is “I certify that on this date I served a copy of this [name of document] on the parties or their attorneys by first-class mail addressed to their last-known addresses.” This language would change depending on who is being served (single party versus multiple parties, etc.).

3. CIA 03, 14 Day Notice, Civil Infraction

A request has been made to replace item 3 with the following: “The cost to compel appearance may be added to the amount of your judgment.”

4. CIA 06, Order to Show Cause, Civil Infraction

MCR 2.107(B)(1)(b) says “When a contempt proceeding for disobeying a court order is initiated, the notice or order must be personally delivered to the party, unless the court orders otherwise.” Should this form contain language ordering service by mail pursuant to this rule? See MC 230, Order to Show Cause, for an example.

Also, it is suggested that this form does not meet the minimum requirements of MCR 3.606. MCL 257.908 specifies the procedures for noncompliance with a judgment, but MCR 3.606 may precede these provisions pursuant to MCR 1.104. Should this form be deleted and MC 230 used in its place, or should CIA 06 be revised? It is suggested that MC 230 be used for all orders to show cause.

5. DC 41, Motion and Order to Seize Personal Property Subject to Forfeiture

A request has been made to change the title of this form from a motion to a petition pursuant to MCL 257.625n(4), which says that “Within 14 days after the defendant's conviction for a violation described in subsection (1), the prosecuting attorney may file a petition with the court”

6. DC 84, Affidavit and Claim, Small Claims

The Officer Certificate in the Proof of Service contains reference to the attorney for a party because standard proof of service language was applied to the form. It is recommended this reference be removed.

7. DC 85, Judgment, Small Claims

Should this form be amended to comply with the changes made to MC 10 in 2007 with regard to judgment interest?

8. DC 90, Petition Regarding Impoundment of Motor Vehicle or Seizure of Motorcycle

A suggestion has been made to add space for the name and address of the towing agency and the secured party as appropriate so that the court will be able to send notice of the hearing to these entities when it is necessary. If the defendant is challenging the reasonableness of towing fees (item 1b is checked), the towing agency rather than the police agency should be notified of the hearing so that it can attend. Likewise, if the vehicle is secured by a third party, the secured party needs to be notified of the hearing because the vehicle could be deemed abandoned and sold. A draft is provided.

9. DC 247, Department of Natural Resources Complaint, Condemnation and Confiscation
DC 248, Department of Natural Resources Order to Show Cause, Condemnation and
Confiscation
DC 249, Department of Natural Resources Order, Condemnation and Confiscation

A request has been made to change the case name on these three forms from “People of” to “In the Matter of” because condemnation proceedings are not criminal in nature. See also agenda item 2 with regard to the return of service on DC 248.

10. DC 250, Felony Register of Actions and DC 251, Misdemeanor Register of Actions

A request has been made to add fields to these forms. A draft is provided.

11. New Form, Affidavit and Counterclaim, Small Claims

The Committee approved development of this form in 2007 for filing a counterclaim in excess of the statutory limit for small claims and requested that SCAO draft the form for review in 2008. A draft of the new form is provided.

12. New Form, Motion, Affidavit, and Order to Set Aside Default/Dismissal

The 46th District Court has requested this new form be considered. There currently exists a motion to set aside default, form DC 99, and an order to set aside default, form DC 99a, so the Committee is asked to consider whether to add language to these forms for setting aside dismissal or whether to alter the draft provided by the 46th District Court.

13. New Form, Notice of Right to Appellate Review and Request for Appointment of Attorney

A request has been made to create a new form for use pursuant to MCR 6.610(F)(3) and MCR 6.625(B). A draft is provided.

Attachments

cc: Regional Administrators



Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909

NOT SENT THIS YEAR BECAUSE HE WILL BE ABSENT

February 18, 2008

Hon. William C. Buhl
Chair, Michigan Court Forms Committee
36th Circuit Court
Courthouse
Paw Paw, MI 49079

Dear Judge Buhl:

Enclosed is the agenda and all materials for the March 8, 2007 Michigan Court Forms Committee. As in 2007, you will be presiding over the entire meeting as Chairperson. Thank you for continuing in this position.

If you have any questions, please call me at (517) 373-4864.

Sincerely,

Amy L. Byrd
Forms Analyst
Trial Court Services

Enclosures

CIRCUIT SESSION

DISTRICT SESSION

JOINT SESSION